

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA RIVER
WATCH, et al.,

No. C 06-06685 CRB

ORDER

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF FISH &
GAME, et al.,

Defendants.

Now pending before the Court are defendants' motion for clarification of the Court's order denying defendants' motion for summary judgment; the United States' motion seeking leave to file brief as amicus curiae; and plaintiffs' motion to strike the amicus curiae brief. After carefully considering the parties' papers, the Court concludes that oral argument is unnecessary. See Local Rule 7-1(b).


Defendants moved for summary judgment on the ground that the land at issue is not owned by the federal government and therefore is not "under Federal jurisdiction" as a matter of law. Thus, to succeed on their motion, defendants had to persuade the Court that "under Federal jurisdiction" is limited to lands owned by the United States; that was the sole argument raised by defendants on that issue. There is very limited authority on this question and the parties' discussion in their memoranda was brief. The Court concluded that

1 defendants' limited discussion had not proved as a matter of law that "under Federal
2 jurisdiction" means only lands owned by the United States; the Court therefore denied
3 defendants' motion. Plaintiffs had not cross-moved for summary judgment, accordingly, the
4 Court did not decide what "under Federal jurisdiction" means; it only decided that defendants
5 had not proved that it means only "owned by the United States"—the sole basis of defendants'
6 motion. The denial of defendants' motion was therefore without prejudice to defendants
7 filing a new motion that proves as a matter of law that whatever "under Federal jurisdiction"
8 means, it does not encompass the lands at issue in this case.

9 In so clarifying the Court's summary judgment order the Court has not relied on the
10 amicus curiae brief. However, as such brief may become relevant should defendants renew
11 their motion for summary judgment, the Court grants the United States' motion for leave to
12 file the amicus curiae brief. Plaintiffs will have the opportunity to address the arguments
13 made by the United States in their opposition to any renewed motion for summary judgment.
14 Accordingly, plaintiffs' motion to strike the brief is denied.

15 **IT IS SO ORDERED.**

16 Dated: July 31, 2007

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18 CHARLES R. BREYER
19 UNITED STATES DISTRICT JUDGE
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